

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

NORMAN HENRY LITTLECALF,	)	
	)	
Plaintiff,	)	
v.	)	Case No. CIV-07-1099-C
	)	
WADE LOCKE, DEPUTY,	)	
	)	
Defendant.	)	

**REPORT AND RECOMMENDATION**

Plaintiff, appearing *pro se*, has submitted to this Court for filing a civil rights complaint pursuant to 42 U.S.C. §1983 alleging violations of his constitutional rights.

By Order of this Court dated October 17, 2007 (the “October 17<sup>th</sup> Order”), Plaintiff’s Motion for Leave to Proceed *In Forma Pauperis* was granted; however, Plaintiff was directed to pay an initial partial filing fee of \$10.00 by November 5, 2007, in accordance with 28 U.S.C. §1915(b) [Doc. #8]. Plaintiff was advised that he would be required to make monthly payments of 20 percent of the preceding month’s income credited to his prison account(s) until the full \$350 filing fee was paid. Plaintiff was further advised that failure either to pay the initial partial filing fee or show cause in writing for the failure to pay could result in dismissal of this action without prejudice to refiling.

Plaintiff failed to pay the initial partial filing fee by November 5, 2007. On November 8, 2007, rather than recommending dismissal of the action for failure to comply with the October 17<sup>th</sup> Order, the Court *sua sponte* gave Plaintiff additional time until November 26, 2007, in which either to pay the initial filing fee or voluntarily dismiss this action [Doc. #9]. Plaintiff was again advised that failure to comply with the terms of the Order could result in dismissal of this action without prejudice to refiling.

A review of the Court file reveals that as of this date, Plaintiff has failed to comply with the Court's previous orders. Plaintiff has not made the initial partial payment or any other payment, requested an extension of time within which to pay, demonstrated good cause for his failure to pay, or sought to dismiss his action voluntarily.

### **RECOMMENDATION**

For the reasons set forth above, it is recommended that Plaintiff's action be dismissed without prejudice for failure to comply with the requirements of 28 U.S.C. § 1915(b) and LCvR3.3.

### **NOTICE OF RIGHT TO OBJECT**

Plaintiff is advised of his right to object to this Report and Recommendation. *See* 28 U.S.C. § 636. Any objections must be filed with the Clerk of the District Court by January 28<sup>th</sup>, 2008. *See* LCvR72.1. Plaintiff is further advised that failure to make timely objection to this Report and Recommendation waives his right to appellate review of the factual and legal issues addressed herein. *Moore v. United States*, 950 F.2d 656 (10<sup>th</sup> Cir. 1991).

### **STATUS OF REFERRAL**

This Report and Recommendation disposes of all issues referred by the District Judge in this matter.

ENTERED this 7<sup>th</sup> day of January, 2008.

A handwritten signature in purple ink, reading "Valerie K. Couch". The signature is fluid and cursive, with a large, stylized "V" and "C".

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VALERIE K. COUCH  
UNITED STATES MAGISTRATE JUDGE